

# **EXHIBIT 11**

Electronically  
**FILED**

by Superior Court of California, County of San Mateo

ON 2/25/2020

By /s/ Mia Marlowe  
Deputy Clerk

1 WILMER CUTLER PICKERING HALE  
2 AND DORR LLP  
3 SONAL N. MEHTA (SBN 222086)  
sonal.mehta@wilmerhale.com  
950 Page Mill Road  
4 Palo Alto, CA 94304 USA  
Telephone: 650 600 5051  
Facsimile: 650 858 6100

5 *Attorney for Defendant Facebook, Inc.*

8 DURIE TANGRI LLP  
LAURA E. MILLER (SBN 271713)  
lmiller@durietangri.com  
CATHERINE Y. KIM (SBN 308442)  
ckim@durietangri.com  
WHITNEY O'BYRNE (SBN 325698)  
wobyrne@durietangri.com  
217 Leidesdorff Street  
12 San Francisco, CA 94111  
Telephone: 415-362-6666  
13 Facsimile: 415-236-6300

14 *Attorneys for Defendants Facebook, Inc., Mark*  
*Zuckerberg, Christopher Cox, Javier Olivan,*  
*Samuel Lessin, Michael Vernal, and Ilya Sukhar*

PIERCE BAINBRIDGE BECK PRICE  
& HECHT LLP  
JOHN M. PIERCE (SBN 250443)  
jpierce@piercebainbridge.com  
THOMAS D. WARREN (SBN 160921)  
twarren@piercebainbridge.com  
JANINE F. COHEN (SBN 203881)  
jcohen@piercebainbridge.com  
ERICK K. KUYLMAN (SBN 313202)  
ekuylman@piercebainbridge.com  
355 S. Grand Avenue, 44th Floor  
Los Angeles, CA 90071

*Attorneys for Plaintiff Six4Three, LLC*

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN MATEO

18 SIX4THREE, LLC, a Delaware limited liability  
19 company,

20 Plaintiff,

21 v.

22 FACEBOOK, INC., a Delaware corporation;  
23 MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
24 JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
MICHAEL VERNAL, an individual;  
25 ILYA SUKHAR, an individual; and  
DOES 1-50, inclusive,

26 Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. Gerald J.  
Buchwald, Dept. 10**

**JOINT SUBMISSION NO. 2 IN RESPONSE  
TO ORDER SETTING CASE MANAGEMENT  
ORDER (SHORT NEUTRAL STATEMENT  
OF THE CASE)**

Date: February 27, 2020  
Time: 9:00 a.m.  
Dept: 10  
Judge: Honorable Gerald J. Buchwald

FILING DATE: April 10, 2015

1 **TABLE OF CONTENTS**

		<b>Page</b>
2		
3	I. JOINT NEUTRAL STATEMENT OF THE CASE.....	1
4	II. MAIN POTENTIALLY DISPOSITIVE ISSUES .....	3
5	A. Defendants' Motions for Monetary and Terminating Sanctions .....	3
6	1. Defendants' Position.....	3
7	2. Plaintiff's Position .....	10
8	B. Individual Defendants' Anti-SLAPP Motion .....	13
9	1. Defendants' Position.....	13
10	2. Plaintiff's Position .....	14
11	C. Defendants' Motion to Stay Based on the Primary Jurisdiction Doctrine.....	15
12	1. Defendants' Position.....	15
13	2. Plaintiff's Position .....	15
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Godkin) disclosed Facebook documents designated as highly confidential to Mr. Kramer in direct  
 2 violation of the protective order. Despite Judge Swope's repeated requests that Six4Three explain how  
 3 Mr. Kramer had access to those materials in the first place, no answer has been provided. Furthermore,  
 4 Six4Three's argument regarding Paragraph 16 of the Protective Order does not apply to Six4Three and  
 5 its then-counsel's multiple other violations of the Court's orders, which are described above, including  
 6 Mr. Kramer's violation of the Court's November 20th order prohibiting him from disclosing the  
 7 documents; Six4Three and its then-counsel's disclosure of summaries of Facebook's confidential  
 8 information to third parties; and Six4Three and its then-counsel's plan to use an alleged expert witness to  
 9 disclose Facebook's confidential information by acting as an anonymous source for the media.

10 Prior to the Court's stay of its March 15 Order, Facebook had already initiated discovery pursuant  
 11 to that order. The status of each of the outstanding discovery items—which were previously raised with  
 12 the Court in Facebook's April 19 Discovery Letter and Defendants' July 12, 2019 Case Management  
 13 Statement—is set forth in Facebook's December 11, 2019 Case Management Conference Statement,  
 14 attached hereto as Exhibit 1. Facebook requests the Court's assistance in resolving these issues at the  
 15 upcoming Case Management Conference.

16 Facebook proposes the following schedule for discovery and briefing of its sanctions motions:

<b>Filing</b>	<b>Proposed Deadline</b>
Substantial completion of document production	March 16, 2020
Completion of depositions	March 27, 2020
Filing of Facebook's motions for sanctions	April 10, 2020
Filing of any oppositions to Facebook's motions for sanctions	April 28, 2020
Filing of any reply to Facebook's motions for sanctions	May 8, 2020
Hearing on Facebook's motions for sanctions	May 22, 2020 or at the Court's earliest convenience

## 26                   **2. Plaintiff's Position**

27 Plaintiff disputes both Defendants' characterization of the history of this dispute and its position  
 28 with respect to the Protective Order and its planned Motion for Sanctions. Defendants' proposed motion

1 for sanctions relates to its contention that Plaintiff violated the Protective Order in this action when  
2 Plaintiff's principal Ted Kramer responded to a compulsory demand for records subject to contempt  
3 received by the Digital, Culture, Media and Sports ("DCMS") Committee of the U.K. Parliament. The  
4 demand was the third demand received by Mr. Kramer when he was visiting London on business. Mr.  
5 Kramer had previously been contacted by a Parliament representative to whom he had made clear that  
6 certain documents that had been produced by Facebook in this action were subject to a Protective Order  
7 and he could not voluntarily release them. Mr. Kramer made clear that he and his legal team were in  
8 possession of the documents requested by the DCMS Committee. The DCMS committee therefore  
9 issued Mr. Kramer an Order that he provide those documents to the DCMS committee. Mr. Kramer did  
10 not respond, and Plaintiff's counsel immediately notified Facebook and the Court of the compulsory  
11 demand and requested Facebook take action in the UK to resolve the matter. This led the DCMS  
12 committee to issue a second order, to which Mr. Kramer also did not respond. Mr. Kramer was then  
13 served with a third Order which the DCMS committee threatened to enforce. The Serjeant-at-Arms of the  
14 House of Commons of the United Kingdom Parliament then followed Mr. Kramer to his hotel lobby.  
15 Fearing he could be arrested and not permitted to leave the country, Mr. Kramer went to Parliament with  
16 the intention of requesting that the Committee mail him a compulsory demand, as the Committee had  
17 previously stated it would. The Committee Chair then stated to Mr. Kramer that he was not permitted to  
18 leave until he agreed to provide the documents. Mr. Kramer then agreed to do so and accessed the  
19 Dropbox file set up by Six4Three's counsel. Mr. Kramer was unaware until that time that he had access  
20 to a limited number of documents (less than twenty percent (20%) of the documents he released to the  
21 U.K. Parliament) that had been designated "attorneys' eyes only" to which he should not have had  
22 access. This was the one and only time that Plaintiff disclosed any confidential information obtained  
23 during discovery and this was only done because foreign officials were threatening to enforce the order  
24 to obtain those documents and had detained Plaintiff's principal.

25 Section 16 of the Protective Order makes clear that a party should not disobey a lawful order from  
26 a court. The DCMS Order was the equivalent of a court order and carried the same consequences should  
27 it be disobeyed. Plaintiff notified counsel for Facebook as soon as the first order was received and  
28 requested Facebook take action in the United Kingdom, where it maintains an office one mile from the

1 U.K. Parliament. Facebook took no action in the United Kingdom to interfere with that Order. Rather, it  
 2 chose to address the issue in this Court. But nothing done by this Court could stop Parliament from  
 3 issuing additional orders to Ted Kramer or from enforcing such orders. Under those circumstances, Mr.  
 4 Kramer felt he had no choice but to obey the Orders. It would be entirely unfair and a denial of due  
 5 process to issue either monetary or terminating sanctions against Plaintiff for complying with a valid  
 6 order.

7 At no time has the Court expressly stated whether Mr. Kramer's disclosure to the DCMS is a  
 8 violation of the Protective Order or whether it qualifies as a court order under section 16. Plaintiff's  
 9 counsel has already admitted to an inadvertent, technical violation of the Protective Order regarding the  
 10 permissions settings in the Dropbox cloud file storage system. This inadvertent disclosure is no different  
 11 from the same inadvertent disclosure of Plaintiff's confidential files that Facebook delivered to the  
 12 Federal Trade Commission (FTC) pursuant to a demand from the FTC to Facebook. Unless or until this  
 13 Court rules on the application of the Protective Order to the U.K. Parliament's compulsory demand, no  
 14 sanctions against Plaintiff should even be considered.

15 Despite the fact that the March 15, 2019 Order contained no express finding that the disclosure to  
 16 Parliament violated the Protective Order, the March 15, 2019 Order allows certain discovery into  
 17 Plaintiff's privileged communications with its counsel. The Order, however, is flawed in several  
 18 additional respects. First, the Order found that Plaintiff and his legal team violated certain orders by  
 19 communicating with various third parties about this case. However, none of these communications  
 20 revealed the contents of confidential documents. They merely assert that Plaintiff was in possession of  
 21 documents that support its allegations. Second, the interpretation applied by the Court constitutes a prior  
 22 restraint on speech which violates the United States and California Constitutions. Third, the Order fails to  
 23 expressly protect attorney work product consistent with California law. Fourth, at the time the Order was  
 24 issued, Plaintiff was an unrepresented company, as its counsel had already stated its intention to  
 25 withdraw based on an unwaivable conflict. Plaintiff's former counsel notified the Court as of late 2018  
 26 that it was no longer representing Plaintiff and was ethically barred from doing so. The Court refused to  
 27 allow counsel to withdraw, despite the conflict, forcing Plaintiff to proceed with conflicted counsel who  
 28 did not even communicate with Plaintiff and only made filings on Plaintiff's behalf to the extent it served